

Succession Policy

Customer
Focus

Respect

Communication

Integrity



www.clochhousing.org.uk



1.0 Introduction

- 1.1 The Association recognises that a house is not just the home of the tenant but also that of members of the tenant's family. As such the Association believes that members of the family should be able to remain in the family home even after the death of the tenant.
- 1.2 Both the Housing (Scotland) Act 2001 (as amended by the Housing (Scotland) Act 2014) and the Scottish Secure Tenancy Agreement provides for succession to the tenancy by a qualified person upon the death of the tenant. The Succession Policy is intended to clarify the conditions that must be met for a legal succession and to give guidance to both staff and potential successors on the succession process.

2.0 Aims and Objectives

- 2.1 The primary aim of the Succession Policy is to put a structure in place, which ensures that those that would qualify to succeed to a tenancy are aware of that right and that staff are able to implement the correct procedures to consider and process an application for succession. The policy is also intended to ensure that all parties are aware of their legal obligations and can fulfil their respective responsibilities.
- 2.2 Arising from these overall aims, the key objectives of the Succession Policy include;
- Ensuring that all applications for succession are treated in a fair and equitable manner.
 - Recognising and protecting the legal rights of all members of the household.
 - Ensuring that the Association, always, meets its legal obligations and operates in accordance with good practice guidelines.
 - Protecting the Association from the succession process being used as a mechanism for by-passing the Allocations system
 - Trying to make best use of the housing stock.
 - Allowing the Association to keep accurate records of the tenants and households in their properties.

3.0 Legal Framework

- 3.1 In all aspects of the succession process, the Association will seek to conform and comply with all legislation, performance standards, guidance and good practice that directly or indirectly affects the process.

The Housing (Scotland) Act 2001, Section 22 and Schedule 3 makes provision for succession to a Scottish Secure Tenancy by a qualified person on the death of the tenant. Schedule 3 defines who is a qualified person and the circumstances in which they can succeed.

The Housing (Scotland) Act 2014, Section 13 makes changes to the rules on succession for family members, unmarried partners and carers.

The Scottish Secure Tenancy Agreement, Part 7 clarifies the rights for succession and the process for both the applicant and the Association.

4.0 Qualifying Persons

In the event of the tenant's death, the tenancy may be inherited by a qualified person as defined by the Housing (Scotland) Act 2001. A qualified person is, in order of priority.

The Association will not permit a succession to any person who cannot prove that the house has been their only or principal home for the relevant period prior to the application being made and was not registered as a member of the household at least 12 months prior to the tenant's death.

A qualifying person must be registered with, and been accepted by, the Association as a member of the household and:

- must have been registered with the Association at least 12 months prior to the tenant's death,
- declared as part of the household on Housing Benefit claims, and/or
- declared as part of the household with the Council Tax Department, and/or
- be claiming any benefits from that address and
- be able to provide evidence of residency.

4.1 First Priority

- The surviving husband or wife of the tenant if the house was their only or principal home at the time of the tenant's death OR
 - The tenant's unmarried partner providing they had lived in the house as their only or principal home for no less than 12 months prior to the death of the tenant OR
 - The surviving joint tenant if the house was their only or principal home at the time of the tenant's death.
-
- The 12-month residency period cannot begin unless we have been told that the individual is living in the property as their only or principal home. We must have been told that by the tenant, a joint tenant, or the person who wishes to succeed to the tenancy.

4.2 Second Priority

If no one under the first category qualifies or chooses to succeed to the tenancy, applications will be considered from a member of the deceased tenant's family providing that;

- The applicant is aged at least 16 years of age at the date of the tenant's death AND

- The house was the applicant's only, or principal home and they were registered with the association for the 12 months prior to the tenant's death.

The 12-month residency period cannot begin unless we have been told that the family member is living in the property as their only or principal home. We must have been told that by the tenant, a joint tenant, or the person who wishes to succeed to the tenancy.

4.3 Third Priority

If no one under either category one or two or they choose not to succeed to the tenancy, applications will be considered from a carer so long as;

- The applicant is at least 16 years of age at the time of the tenant's death AND
 - The house was their only or principal home at the time of the tenant's death and they were registered with the association for the 12 months prior to the tenant's death AND
 - The applicant had given up another only or principal home before the death of the tenant AND
 - The applicant is providing, or has provided, care for the tenant or a member of the tenant's family.
- The 12-month residency period cannot begin unless we have been told that the carer is living in the property as their only or principal home. We must have been told that by the tenant, a joint tenant, or the carer.

4.4 Adapted Houses

Under terms of paragraph 5 of schedule 3 of the Housing (Scotland) Act 2001, a house that has been designed or substantially adapted for the use of persons with special needs can only be inherited by;

- The surviving husband or wife providing the house was their only or principal home at the time of the tenant's death OR
- The unmarried partner providing the house had been their only or principal home for at least 12 months prior to the tenant's death OR
- The surviving joint tenant if the house was their only or principal home at the time of the tenant's death OR
- A qualifying person under Categories 2 and 3 that has special needs requiring the adaptations made to the property, providing the house was their only or principal home for 12 months prior to the tenant's death.

A person that would have qualified under either category 2 or 3 but does not have special needs, have right to suitable alternative accommodation as defined in part 2 of schedule 2 of the Housing (Scotland) Act 2001. They will have the right to remain living in the house until the Association is able to offer suitable alternative accommodation.

4.5 More Than One Qualifying Person

Where there is more than one person that would qualify under the same category of priority, it is expected that the qualifying persons and/or the family members would agree amongst themselves who should succeed to the tenancy.

The Association will accept a joint application from the qualifying persons and, providing the succession is approved, would grant a joint tenancy.

However, where no agreement can be reached between the qualifying persons within 2 weeks of the tenant's death, the Association may make the decision as to who will succeed to the tenancy. In making the decision the Association will take into consideration factors such as;

- The wishes of the deceased that may be included or indicated in their will.
- The length of time each qualifying person has resided in the house.
- The housing need of each applicant.
- The size of the property and the composition of each applicant's household.
- Past conduct within the house of each applicant.

The Housing Services Manager will approve the selection of the successor.

5.0 Permitted Rounds of Succession

5.1 Under the Housing (Scotland) Act 2001, two rounds of succession are permitted. However, where both rounds of succession have passed, the Association will consider the housing needs of the remaining household.

5.2 Where a member of the remaining household would have been a qualifying person but cannot succeed to the tenancy because both rounds of succession have been used, they have the right to remain in the property for six months after the tenant's death under a statutory tenancy (this will NOT be a Scottish Secure Tenancy).

5.3 However, the Association will consider an application from the qualifying person to either have the tenancy transferred into their name or to be considered for suitable alternative accommodation. In deciding, the Association will consider;

- The size of the property.
- The household composition.
- The applicant's length of residency in the property.
- The applicant's previous conduct within the house.

5.4 Permission to transfer the tenancy will not normally be given where this would result in the property being either overcrowded or under-occupied.

5.5 All applications will be assessed on their own individual merit and no decision made in one case will be taken to be setting precedence for any future applications.

Permission to transfer the tenancy or to offer suitable alternative accommodation must be approved by the Housing Services Manager and will be reported to the Association's Housing & Property Services Sub-Committee.

6.0 Applying for Succession

- 6.1 Applications for succession must be submitted in writing to the Association no later than 1 week after the death of the tenant. Applicants will be required to complete the Association's application form, providing all the information and evidence required by the Association to correctly determine the applicant's eligibility to succeed to the tenancy.
- 6.2 Although not governed by statute, the Association will endeavour to respond in writing to the application within 28 days of the completed application, and all relevant supporting documentation, being received.

7.0 Unsuccessful Applications

- 7.1 Applications for succession will only be refused where the applicant cannot show, to the Association's satisfaction that they are a qualified person; or did not reside in the property for the 12-month qualifying residency period prior to the tenant's death. It will be the responsibility of the applicant to provide the Association with the evidence required to prove they have the right to succeed to the tenancy.
- 7.2 Where an application is unsuccessful, the Association will write to both the applicant and the deceased tenant's next of kin (if applicable) stating the reasons for refusing the succession.
- 7.3 Where an applicant does not have the right to succeed, Cloch have no discretion to grant a succession of tenancy. However, in exceptional circumstances, and in order to prevent homelessness, the Association may consider an application to grant a new tenancy to anyone who was unsuccessful in a Succession application. In these exceptional cases, and depending on the individual circumstance, we may consider it appropriate to allocate a tenancy to the applicant, for example the existing tenancy or the tenancy of another property where the applicant can provide documentary evidence that they have lived in the property for over 12 months.
- 7.4 In these cases a new tenancy will be granted and it will not be a succession. In all cases, the Association will seek clarity regarding proof of residency from the applicant and all cases will be assessed in line with the current Allocations Policy. This may mean that the applicant is offered another property of a smaller size in order to meet their housing need.

8.0 The Succession Process

- 8.1 Successors to a tenancy will be required to sign a new tenancy agreement to confirm that they are accepting the terms, conditions and responsibilities of the Scottish Secure Tenancy Agreement. The date of succession will be the date of death of the preceding tenant.

- 8.2 Any arrears outstanding at the time of the tenant's death will be charged against the tenant's estate. Where there is no estate, the Association will ask the successor to pay any monies owed to the Association by the deceased. Where this will create hardship, the Association may not pursue the successor for the debt, and the arrear will be treated as a former tenant debt.
- 8.3 Where the tenancy is transferred to another person because the two rounds of succession have been used, the original tenancy will be ended on the date of death and a new Scottish Secure Tenancy Agreement signed by the new tenant. The tenancy start date will be the date of death of the preceding tenant.
- 8.4 A house inspection will be carried prior to the succession or transfer of the tenancy and any statutory repairs required carried out.

9.0 Delegation of Authority

- 9.1 The practical implementation of the policy and the day-to-day operation of the succession procedures will be undertaken by members of the Association's Housing Services Section. The Housing Services Manager will have the delegated authority to give or withhold consent for a succession.

10.0 Appeals and Complaints

- 10.1 Appeals or complaints against our operation of this policy will be processed through the Association's complaints handling procedure.
- 10.2 Every service user has final recourse to the Scottish Public Services Ombudsman, please refer to the separate Complaints Handling Procedure.

11.0 Applications from Employees, Governing body members etc.

- 11.1 The Association may receive applications from tenants who are employees, board members, former employees, former board members or close relations of the above in line with the eligibility criteria within this policy. In the event of such an application being approved, the decision made regarding this must comply with the guidelines laid down in the Association's Entitlements, Payments and Benefits Policy.

12 Data Protection & Confidentiality

- 12.1 All information supplied to the Association by applicants will be treated as strictly confidential and will be handled in line with current Data Protection Act legislation. Information will not be revealed to any other party without the prior consent of the applicant or in line with data protection principles. Applicants have the right to inspect any records held on their housing application. For more information please refer to the association's Privacy Policy.
- 12.2 The Association may have to make enquiries to confirm information provided in the application. Express consent is granted by the applicant by accepting the declaration on the application form for data to be revealed to allow exchange of information with other agencies where appropriate and for their application to form part of their tenancy record.

13.0 Equalities Commitment

- 13.1 Cloch Housing Association Ltd is committed to tackling discrimination on the grounds of sex or marital status, racial grounds, or grounds of disability, age, sexual orientation, language, social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.
- 13.2 Cloch seeks to embrace diversity, promote equal opportunities for all and eliminate any unlawful discrimination in all areas of our work.

14.0 Policy Availability

- 14.1 This document can also be provided in large print, braille, audio or other non-written format and in a variety of languages, on request.

15.0 Monitoring and Review

- 15.1 This policy will be reviewed every five years or as legislative changes deem appropriate.

**Customer
Focus**

Respect

Communication

Integrity

CLOCH HOUSING ASSOCIATION LTD	
Policy Name	Succession Policy
Policy Category	HM
Policy Number	031
Date Adopted	01/03/1998
This Review	24/11/2020
Next Review	November 2023
Equalities Impact Assessment Required	No
Link to other policies	
Consultation	Internal
Need for Procedure	Yes